## Before the Federal Communications Commission Washington, D.C. 20554

In the Matter of	)
DALE E. REICH	)
Petition for Rule Making, Changes in Parts 2, 13, 90, 95 and 97 for Control of Illegal Modified Radio Equipment	)
or Repair Services	)

## **ORDER**

Adopted: November 29, 2004 Released: December 1, 2004

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

- 1. *Introduction*. In this *Order*, we address a Petition for Rule Making filed on June 30, 2003, by Dale E. Reich (Reich), requesting that the Commission permit only licensed commercial radio operators to maintain and repair radios operating pursuant to provisions of Parts 90, 95, and 97 of the Commission's Rules. We conclude that issuance of a Notice of Proposed Rule Making as requested in the Reich petition is not warranted, because Reich has not made a sufficient showing to support amendment of the rules as requested. We therefore deny Reich's petition.
- 2. *Background*. In 1984, the Commission eliminated rules that permitted only licensed commercial radio operators to perform certain duties described in the rules applicable to the Private Land Mobile Radio Service and Personal Radio Services.<sup>2</sup> The Commission concluded that such a requirement was not necessary to avoid interference, because responsibility for proper operation should ultimately rest with the user of the radio.<sup>3</sup> It therefore eliminated the licensing requirement as "unnecessary government regulation and involvement" in an area that could be better addressed by industry certification programs.<sup>4</sup>
- 3. We note that Reich earlier filed a petition seeking relief similar to that requested here. On February 10, 2003, Reich requested that the Commission require the licensing of technicians who program the frequencies of radios operating pursuant to Parts 90, 95, and 97. He argued that such a requirement was necessary to prevent the widespread use of radios with unauthorized frequencies programmed into them. The petition was placed on public notice, and the three commenters which filed

٠

<sup>&</sup>lt;sup>1</sup> See Reich Petition for Rule Making, Changes in Parts 2, 13, 90, 95, and 97 for Control of Illegal Modified Radio Equipment or Repair Services (filed June 30, 2003) (Petition).

 $<sup>^2</sup>$  See Requirements for Licensed Operators in Various Radio Services, Report and Order, Gen. Docket No. 83-322, 96 F.C.C. 2d 1123, 1141  $\P$  36, 1145  $\P$  44 (1984).

<sup>&</sup>lt;sup>3</sup> See id. at 1144  $\P$  43.

<sup>&</sup>lt;sup>4</sup> See id. at 1143 ¶ 40.

<sup>&</sup>lt;sup>5</sup> Reich Petition for Rule Making, Request Amendment of Part 13 to Require Licensing for Programmers of Certain Part 90, 95, and 97 Radios, RM-10681 (filed Feb. 10, 2003).

<sup>&</sup>lt;sup>6</sup> See id.

comments all opposed the proposal.<sup>7</sup> On September 10, 2003, the Public Safety and Private Wireless Division (Division)<sup>8</sup> denied the petition.<sup>9</sup> The Division concluded that neither the petition nor the subsequent record demonstrated that a licensing requirement was in the public interest, or that the use of unauthorized frequencies was so widespread as to require Commission action.<sup>10</sup>

- 4. *Discussion*. In the present petition, Reich argues that the Commission should permit only licensed commercial radio operators to maintain and repair radios used in Part 90, 95, and 97 services in order to prevent unauthorized radio modifications, which he alleges, without substantiation, have become common. We deny the instant petition because we again conclude that Reich has not demonstrated that such a requirement is in the public interest, or that unauthorized radio modifications are of a degree requiring such action. Reich provides no support for his contention that unauthorized modification(s) of such radio systems present a significant problem, whether by creating enforcement burdens, compromising our regulatory structure, or by presenting harmful interference to other services. Nor does he suggest that the Commission's enforcement processes are inadequate to ensure compliance with the specific rules that prohibit persons lacking the required certification from performing internal repairs or adjustments to such radio equipment. Section 1.401(e) of the Commission's Rules states that petitions that are premature or repetitive, or plainly do not warrant consideration, may be denied or dismissed without prejudice. The Reich petition falls in that category. We require a more substantial basis than unsupported assertions before initiating a rulemaking proceeding.
- 5. The petition also is procedurally defective. Specifically, Reich does not provide the text for his several proposed modifications to the five rule Parts listed in his petition, and the substance of changes he requests is not consistently or clearly stated.<sup>13</sup> His description of the proposal's scope, for example, refers variously to "Equipment from 24 MHz to 35 MHz" and "The entire Low Band from 25 MHz to 50 MHz" as well as other frequency bands, including "930 MHz to 6 GHz in the areas close to existing Part 15 Transmitters."
- 6. *Conclusion*. In sum, we have no reason to believe that Reich has identified a significant problem. To the extent violations of our rules may occur, Reich fails to show that our existing regulatory regime and enforcement processes are inadequate to address them. In the absence of a demonstrated problem, and in light of the substantial statutory penalties<sup>14</sup> provided for unauthorized modification of

<sup>&</sup>lt;sup>7</sup> Dale E. Reich, *Memorandum Opinion and Order*, 18 FCC Rcd 18555, 18555 n.3 (WTB PSPWD 2003) (*Reich Order*).

<sup>&</sup>lt;sup>8</sup> The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division were assumed by the Public Safety and Critical Infrastructure Division. *See* Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414, 25414 ¶ 2 (2003).

<sup>&</sup>lt;sup>9</sup> See Reich Order, 18 FCC Rcd at 18557 ¶ 7.

<sup>&</sup>lt;sup>10</sup> See id. at  $18557 \, \P \, 5$ .

<sup>&</sup>lt;sup>11</sup> See Petition at 1, 2.

<sup>&</sup>lt;sup>12</sup> 47 C.F.R. § 1.401(e), reads:

<sup>(</sup>e) Petitions which are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner.

<sup>&</sup>lt;sup>13</sup> See 47 C.F.R. § 1.401(c) ("The petition shall set forth the text or substance of the proposed rule, amendment, or rule to be repealed, together with all facts, views, arguments and data deemed to support the action requested, and shall indicate how the interests of petitioner will be affected.").

<sup>&</sup>lt;sup>14</sup> See 47 U.S.C. §§ 501-503.

certificated equipment, by whomever performed, we do not believe that establishing licensing requirements for technicians is necessary.

- 7. Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.401(c) and (e) of the Commission's Rules, 47 C.F.R. §§ 1.401(c) and (e), the Petition for Rule Making filed by Dale E. Reich IS DENIED.
- 8. This action is taken pursuant to delegated authority granted under the provisions of Sections 0.131(a) and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131(a), 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm Chief, Public Safety and Critical Infrastructure Division Wireless Telecommunications Bureau